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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6071 OF 2006

Smt.Manoramabai Keshav Joshi.
Age 85 yrs., Occ. Nil
R/at.2nd Floor, Ramakeshav Apartment,
Mahatma Phule Marg,
At Post Tal. Panvel,
District - Raigad. .. Petitioner

V/s.

1. Shri Arun Keshav Joshi
   Age 59 yrs., Occ.-Business,
   R/at.1st Floor, Anand Niketan,
   Mahatma Phule Marg,
   At Post Tal. Panvel,
   District - Raigad.

2. State of Maharashtra. .. Respondents.

Mr.R.S.Apte i/b.M.S. Lagu for petitioner.
Mr.R.M.Patne, AGP for respondent no.2.

CORAM : J.H. BHATIA, J.

DATE : 12TH OCTOBER, 2007.

JUDGMENT :-

. Rule.

2. Rule made returnable forthwith. With consent of learned counsel for the parties, the matter is taken up for final hearing.

3. The petitioner, who is an old lady aged about 85 years, is admittedly widow of one Keshav Joshi. Respondent no. 1 is her son. She has one more son. She filed Special Civil Suit no. 12 of 2005 seeking declaration of title and perpetual injunction restraining the defendant/respondent no. 1 from interfering in her possession over the disputed property. The property consist of a house bearing city survey no.666/KA situated within the limits of Panvel Municipal Council. Admittedly, this property originally belonged to her husband Keshav Joshi, who died on 9th July, 1987. Keshav Joshi has left behind the petitioner as a widow, two sons, namely, Arun and Vilas and three married daughters. Arun is the defendant. According to the petitioner/plaintiff on 26th October, 1987 the defendant and her other children executed the document whereby they surrendered their rights in the property left behind by her husband and thus she claims to be exclusive owner of the said property. Recently the defendant has started to harass her and to cause interference in her possession over the property. Therefore, she filed the suit for declaration and perpetual injunction. The property is valued for the purpose of

jurisdiction and court fee at Rs.77,23,000/- and in a normal circumstances the plaintiff would be liable to pay court fees of Rs.1,07,106/-. However, the plaintiff, being a woman, claimed exemption from payment of court fees by virtue of a notification issued by the Government of Maharashtra under section 46 of the Bombay Court Fees Act. The defendant opposed the prayer for exemption from payment of the court fees. According to him, she was entitled to get her 1/6th share of the property of her husband and as she has claimed remaining property on the basis of registered documents, she cannot get exemption from the payment of court fees in respect of whole of the property.

4. After hearing the parties, the learned Civil Judge, Senior Division, Panvel upheld the contention of defendant no. 1 and held that the plaintiff/petitioner is entitled to exemption from payment of court fee only to the extent of 1/6th share, but she has to pay court fee for the remaining 5/6th shares of the property and directed her to pay the court fee accordingly within one month, failing which the plaint was directed to be rejected. Being aggrieved by the said order, the

petitioner has preferred the present writ petition.

5. Heard the learned counsel for the parties.

6. Section 46 of the Bombay Court Fees Act, 1959 empowers the State Government to remit the fees mentioned in the first Schedule of the said Act by notification of the Official Gazette, if any.

7. Admittedly, the Government of Maharashtra issued a Notification no. G.N.R. & F.D.NO.STP. 1094/CR-859/m-1, dated 1st October, 1994. By that Notification the Government of Maharashtra remitted the fees payable by women litigants on any of the plaint, applications, petitions, Memorandum of appeals or any other documents specified in the First and Second schedule of the Bombay Court Fees Act to be filed in any Civil, Family or Criminal courts in respect of the cases relating to (a) maintenance, (b) property disputes, (c) violence and (d) divorce. It was noticed that the benefit of the exemption was being taken in filing the suits in respect of the commercial or business

transactions also. Therefore explanation was added to the said notification by another notification dated 23rd March, 2000. Explanation reads as follows :-

> **"EXPLANATION :-**
>
> The expression 'property disputes' shall mean property disputes arising out of concerning matrimonial matters."

The expression 'property disputes' shall mean property disputes arising out of or concerning matrimonial matters. In view of this amendment to the original notification now a woman would not be required to pay court fee in the matter filed by her in respect of maintenance, violence, divorce and the property disputes arising out of the matrimonial matters. If the dispute pertaining to the property which are not concerning the matrimonial matters, she is liable to pay court fees on the same.

8. Undoubtedly, the suit filed by the petitioner raised a property dispute. Question is whether this property dispute can be said to be related or concerning matrimonial matters. As stated earlier, admittedly, the suit property is

belonging to her deceased husband. She claims the property because of her matrimonial relations with the deceased owner of the property. There appears no dispute that shortly after the death of her husband, their children, including the defendant, executed a registered document whereby they surrendered their rights in the said property and as a result, the petitioner alone claims to have become owner of that property. Thus, she claims the property as owner and legal heir of her husband. The dispute does not pertains to any commercial transaction or about any transaction about purchase or sale of the property.

9. The facts in the case of **Smt.Ramila Rajnikant Kilachand v/s. Mr.Harsha Rajnikant Kilachand & Ors, 2004(4) ALL MR 106** were almost similar, except that in the said case, besides the woman, her sons were also claiming certain shares in the property. The learned Single Judge of this court referred to the authorities rendered by this court in different matters and came to the conclusion that there are different facts of the dispute and if the women can relate the property dispute to the dispute pertaining to matrimonial matters, she can take exemption from payment of

court fees and that too to the extent of her own share and not for the shares claimed by her sons or other family members. The learned Single Judge made following observations in para 20 of the said Judgment :

> "Suffice for me to state that in the present case, the status of plaintiff is that of a wife/widow. She is claiming a declaration of her share in the property of her deceased husband on the basis that she has a right therein upon his demise. She has averred that, that right is being denied to her not just by other members of her deceased husband's family but even her own son. She claims her individual right in the property and prays for ascertainment of the share therein and upon such ascertainment to grant the same and for that purpose, even, partition the assets and properties, by metes and bounds. It is, therefore, a clear case where on account of matrimonial relationship, the plaintiff asserts her right in the properties of her deceased husband which devolves either in terms of intestate succession or by testamentary disposition being executrix and beneficiary of the estate. This is a case of a woman beneficiary coming as a litigant to he court seeking her share in the estate of her deceased husband, denied to her by the members of the husband's family. In my view, such matters is covered by the explanation and could safely be termed as a property dispute arising out of matrimonial relationship. To the extent of the plaintiff's share in the property of her deceased husband she is therefore, entitled to seek exemption from payment of court fees. It is clarified that after adjudication, if

> ultimately, it is found that the plaintiff is not sole beneficiary but there are others then to the extent of her sons share, plaintiff or the sons will have to pay court fees. Suit for partition is not a suit where parties are strictly adversaries. It is a suit where all parties are plaintiffs and defendants. In such litigation it will not be proper to hold that the woman litigant would be entitled for exemption in payment of court fees, not just qua her share as beneficiary but even that of her sons. As held by this Court (Patil, J.), exemption will be restricted to the plaintiff and her share in the estate of deceased".

. From the above observations in Smt.Ramila Rajnikant Kilachand vs. Mr.Harsh Rajnikant Kilachand & Ors. it is clear that the plaintiff had claimed share for herself, as well as, her sons by succession to her husband’s property. This court held that a woman litigant is entitled to the benefit of exemption under the notification dated 1st October, 1994 and it was clarified that if finally it is found that she is not sole beneficiary but there are others also, then, to the extent of her sons shares, the plaintiff or her son would have to pay court fees.

10. In the present case, the plaintiff/petitioner, who is a woman, claims exclusive title over the property for herself. It

appears that the dispute is between herself and her elder son. The defendant's other children are not the parties to the suit. Taking into consideration the facts of the present case, purpose of the beneficial social scheme in the form of notification issued by the Government for benefit of woman about the property dispute and the view taken by this court in different cases, it must be held that the present dispute is pertaining to the property consisting the matrimonial dispute and therefore, the petitioner is entitled to the exemption. The learned trial court committed errors in directing her to pay court fees to the extent of 5/6th share in the property.

11. In the result, the petitioner succeeds. The impugned order passed by the learned Civil Judge, Senior Division, Panvel directing to pay court fee, is hereby set aside. It is hereby declared that she is entitled to exemption for payment of the court fees in the said suit. Rule made absolute accordingly.

(J.H.BHATIA, J)